

**IN THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF COLUMBIA**

**KASIMBEKOV KOMOLIDDIN  
TOHIRJANOVICH**

Guantanamo Bay Naval Station,  
Guantanamo Bay, Cuba  
Petitioner

V.

**GEORGE W. BUSH, et. al.**

President of the United States  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500;

CIVIL ACTION  
(HABEAS CORPUS)

No: 05-CV-00994 (JDB)

JUDGE JOHN D. BATES

**PETITIONER’S MOTION TO LIFT THE  
STAY OF PROCEEDINGS  
AND SET A SCHEDULING CONFERENCE**

Petitioner, Kasimbekov Komoliddin Tohirjanovich, through his attorneys, hereby moves that this Court lift the stay entered in notices filed on February 3 and March 3, 2006, reopen the case and set a date for a scheduling conference.

1. In notices filed in 2006, this Court stayed all pending motions in Mr. Tohirjanovich's case in light of the enactment of the Detainee Treatment Act and pending resolution of the jurisdictional questions raised by the legislation. Thereafter, the Court of Appeals found that the Court had no jurisdiction. Boumediene v. Bush, 476 F.3d. 981 (C.A.D.C. 2007).

2. On June 12, 2008, the Supreme Court reversed the decision of the Court of

Appeals, ruling that prisoners at Guantanamo have *habeas corpus* rights protected under the U.S. Constitution; the review procedures of the Detainee Treatment Act are not an adequate substitute for *habeas corpus*; and the Military Commissions Act, insofar as it purported to strip the courts of *habeas corpus* jurisdiction, was unconstitutional. Boumediene v. Bush, \_\_\_ S.Ct. \_\_\_, 2008 WL 2369628 (June 12, 2008). The Court stated that it was now up to the trial courts to resolve questions regarding “the legality of . . . detention” of Guantanamo detainees. Id. at \*8. In so ruling, the Court made clear that the “detainees in these cases are entitled to a prompt *habeas corpus* hearing.” Id. at \*44. Since the basis for the stay no longer exists, it should be vacated forthwith and Petitioner’s *habeas* proceedings should move forward.

3. Petitioner requests that the Court set the matter for a status conference to consider a schedule for a prompt resolution of Petitioner’s claims, in accordance with the direction of the Supreme Court. Petitioner has been held at Guantanamo since approximately February, 2002. He has been awaiting action on his *habeas corpus* petition since it was filed in May, 2005. Moreover, Mr. Tohirjanovich has been eligible for transfer at least since February, 2007, more than sixteen months ago.<sup>1</sup>

4. Undersigned counsel have contacted counsel for the government in accordance with Local Rule 7(m), to ascertain respondents position on this motion. At the time of filing,

---

<sup>1</sup>In an email message to undersigned counsel on February 22, 2007, the Department of Defense acknowledged that Petitioner was “approved to leave Guantanamo, subject to the process for making appropriate diplomatic arrangements for his departure.” See “Detainee Status Notification” Email from DAVID N. COOPER, Lt Col, USAFR, Staff Judge Advocate, DOD HQ OARDEC, Office for the Administrative Review of the Detention of Enemy Combatants, Washington, DC, to Shawn Nolan, Esq. (2/22/07), attached as Exhibit 1. In that email, it is noted that Mr. Tohirjanovich will not have any subsequent Administrative Review Board hearings. As such, there is no process whatsoever left to him at Guantanamo. For these reasons, his need for this Court’s swift action to allow him to invoke his right to *habeas corpus* is greatly heightened.

counsel have not received a response.

**WHEREFORE**, for all of the foregoing reasons, Petitioner respectfully requests that this Honorable Court lift the stay, reopen the case and set the matter for a status conference.

Respectfully submitted,

/s/Billy H. Nolas

Billy H. Nolas (DC 399275; PA 83177)

Assistant Federal Defender

Maureen Rowley (PA 33020)

Chief Federal Defender

Matthew Lawry (PA 87221)

Shawn Nolan (PA 56535)

Mark Wilson (PA 26887)

Assistant Federal Defenders

Federal Community Defender Office for the

Eastern District of Pennsylvania

601 Walnut Street, Suite 545 West

Philadelphia, PA 19106

(215) 928-0520; (215) 928-1100

Dated: June 18, 2008

### Certificate of Service

I hereby certify that a true and correct copy of the foregoing instrument has been served on Respondents through the Court Security Officer in accordance with the Standard Protective Orders:

Mr. Terry Henry  
US DEPARTMENT OF JUSTICE  
20 Massachusetts Avenue, NW  
Room 7226  
Washington, DC 20529-0001

/s/Billy H. Nolas  
Billy H. Nolas

Dated: June 18, 2008